

# Judicial Settlement

of International Disputes

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## The American Society for Judicial Settlement of International Disputes—Its Scope and Work

by

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Letters from President Taft, the Secretary of  
State and Senator Root

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# Aim and Purpose of the American Society for Judicial Settlement of International Disputes

By James Brown Scott

The American Society for Judicial Settlement of International Disputes has for its aim and purpose not merely the creation of a permanent tribunal for the judicial settlement of international controversies, but also the creation of public sentiment both at home and abroad in order to compel nations to submit their international disputes susceptible of judicial determination to a permanent international court.

The proposed international tribunal is to be composed of judges who have already had

judicial experience or who are lawyers of standing and approved training. The court is to be established at The Hague and is to be permanent, that is to say, it is either to be permanently in session at The Hague, or so permanently composed that its judges may assemble in order to decide promptly and impartially any case submitted to its consideration of which it has jurisdiction, either by a general treaty of arbitration or by special agreement of the litigating nations.

The proposed court differs radically from the so-called permanent court of The Hague and has, indeed, little in common with it. The Society does not, however, desire to replace the alleged Permanent Court of Arbitration, but to create in addition thereto a truly permanent tribunal. The name Permanent Court of Arbitration as applied to the institution existing at The Hague has been a source of confusion and misunderstanding, because it is not a court in the judicial sense of the word, nor is it permanent. It is at most a panel of judges from which a temporary tribunal may

be created for the trial and determination of a particular case submitted.

#### *Difficulties Attending Arbitration at the Present Time.*

Nevertheless, the creation of the so-called Permanent Court of The Hague marks a great era in progress; for each nation agreed to nominate and has actually nominated not more than four persons for a period of six years who are considered by the appointing powers to be qualified as judges to pass upon international controversies. But these prospective judges remain in their home countries; they do not reside at The Hague. To constitute a temporary tribunal for the trial of an individual case, it is necessary to select from this large list of judges the requisite number varying from 5 to 3, a proceeding which is shown by experience to be attended with difficulties involving delay and many embarrassments. In addition to the delay and other difficulties, the expenses of the proceeding, including the organization of the Court, the traveling expenses of the judges and their honorarium are paid

by the litigating nations, so that the cost involved in the trial of any case, through the necessity of creating a special court for its determination, is so excessive as to deter many litigants from submitting controversies to it. There is still a graver objection to the so-called Permanent Court of Arbitration at The Hague which appears from even a casual examination of the list of judges, for they are, for the most part, diplomats by profession and they naturally decide questions submitted to them by the standards of their profession. The decision is thus likely to be a compromise instead of the cold and passionless application of a principle of law to the facts involved in the controversy. This objection has been clearly pointed out by the Hon. Elihu Root in a letter, from which a quotation is made, to the organizers of the American Society for Judicial Settlement of International Disputes:

“I beg to say to your guests that I sympathize very strongly with their object and believe that the proposed organization is adapted to render a great public service. I assume

that the new organization is to have a definite, specific object which may be indicated by emphasizing the word 'judicial' in its title to indicate a distinction between that kind of settlement of international disputes and the ordinary arbitration as it has been understood in the past and is generally understood now.

"I assume that you are going to urge that disputes between nations shall be settled by judges acting under the judicial sense of honorable obligation, with a judicial idea of impartiality, rather than by diplomats acting under the diplomatic ideas of honorable obligation and feeling bound to negotiate a settlement rather than to pass without fear or favor upon questions of fact and law.

"It seems to me that such a change in the fundamental idea of what an arbitration should be is essential to any very great further extension of the idea of arbitration. I have been much surprised, however, to see how many people there are of ability and force who do not agree with this idea at all, particularly people on the other side of the Atlantic. The extraordinary scope of judicial power in this country has accustomed us to see the operations of government and questions arising between sovereign States submitted to Judges who apply the test of conformity to estab-

lished principles and rules of conduct embodied in our Constitutions.

"It seems natural and proper to us that the conduct of government affecting substantial rights, and not depending upon questions of policy, should be passed upon by the Courts when occasion arises. It is easy, therefore, for Americans to grasp the idea that the same method of settlement should be applied to questions growing out of the conduct of nations and not involving questions of policy.

"In countries, however, where the Courts exercise no such power, the idea is quite a new one to most people, and, if it is to prevail, there must be a process of education. Such a process will naturally receive its chief impulse in the United States, and I hope your new society will give such an impulse with vigor and accurate direction."

#### *Advantages of Mr. Knox's Plan.*

The proposed new international tribunal is free from these objections, and has many positive advantages to commend it. In the first place, it is permanently constituted, whether or not the individual judges reside at The Hague or are summoned when a case



arises. Secondly, it is composed of judges who bring to the determination of the case the standards of judges and the legal attainments of the bar. Thirdly, the expenses of the court other than the individual expenses of the litigants, are borne by the family of nations, not by the parties in controversy.

Again the present so-called Permanent Court of Arbitration may be asked to decide controversies of a political nature and its composition lends itself to their determination, whereas the proposed permanent tribunal is to deal primarily with questions susceptible of judicial determination.

From another point of view the advantage of such a permanent tribunal is self-evident, because international treaties and conventions should be authoritatively interpreted and disputes arising from them determined by a tribunal to which the signatories are parties.

At present, the sentence of a temporary tribunal merely and necessarily binds the parties to the record; whereas an international tribunal would, as the representative of the na-

tions, bind the states as a whole as well as the individual litigants, just as the judgment of the Supreme Court of the United States binds the forty-six States of the Union as well as the individual litigants. Again, the existence of a Permanent Court will not only be an invitation to litigate, but the actual determination of an international controversy before national passions have been inflamed will be in itself no mean service. Experience shows how national passion forces the hands of ministers and how easily nations either drift or rush madly into war, when such an eventuality would either be impossible or improbable if machinery existed for the calm and judicial settlement of a controversy before it had assumed a critical aspect.

It is at once evident that a court permanently composed and permanently in session, if need be, will prove of inestimable service in the judicial development of international law, and that each decision will be regarded as a precedent for subsequent decisions, so that the common law of nations will be developed as

scientifically and as unerringly as the common law of England has been developed by professional judges. There will thus be continuity in its decisions, which can not well be the case with a temporary tribunal whose decisions have no binding effect upon another and a distinct temporary tribunal composed of different judges.

The President and Mr. Knox.

The advisability, indeed the necessity for the establishment of a truly permanent tribunal is too clear to need argument, and it is a source of gratification that the Secretary of State of the United States, the Honorable Philander C. Knox, recently proposed in a circular letter addressed to the powers, the establishment of such a tribunal, and the responses to the circular letter have been of such a favorable nature as to justify the expectation that this tribunal will be established and in operation at The Hague in the very near future. It is also deeply significant that the President of the United States, the Honorable William Howard Taft, has given his hearty

approval to this suggestion and addressed the following communication to the organizers of the American Society for Judicial Settlement of International Disputes, of which Society he has accepted the Honorary Presidency:

“I have learned with interest of the plans to found an ‘American Society for Judicial Settlement of International Disputes.’

“The leaflets which you propose to publish, together with the meetings of national scope which you are planning to hold from time to time, may have a very great influence on the development of public opinion on this important subject. If the proposed Court of Arbitral Justice at The Hague becomes an accomplished fact there will still remain the task of securing the adhesion of a number of Powers to the Court, and the very important task of so cultivating opinion in various countries as to incline Governments to resort to the Court when occasion calls for it. There is no other single way in which the cause of peace and disarmament can be so effectively promoted as by the firm establishment of a Permanent International Court of Justice.”

### **Limitations of the Society.**

The American Society for Judicial Settlement of International Disputes will confine itself strictly to efforts directed to the establishment of an international court of justice and to the creation of international opinion for the submission of international controversies to the court when established. Its aim and scope are thus clearly announced and defined. It will heartily co-operate with all of the peace and arbitration societies, and supplement their work by promoting the establishment of a tribunal in which international controversies may be determined by judicial means.

The constitution of a permanent court of arbitral justice is beset with many difficulties, but is not impossible if public opinion pronounce in its favor. The project has busied the minds of the ablest writers and thinkers for the past few centuries and the project of the select has now become the property of the many. A man is no longer a dreamer because he proposes the judicial organization of the world, for the First Hague Conference took

the first step in 1899 by organizing the so-called Permanent Court and the Second Hague Conference actually approved and voted a convention of thirty-five articles for the establishment of a permanent court of arbitral justice, leaving the definitive composition of the tribunal to be effected through the channels of diplomacy. Diplomacy, though sure-footed, is proverbially slow and public opinion such as this society and other societies in this and other countries can form is needed in order to set diplomacy in motion. The President of the United States has declared publicly in favor of a truly permanent tribunal; the Secretary of State is, it is well known, engaged in negotiations for its constitution with every prospect of success, for various powers are committed to the project. The project is no longer utopian or visionary; it is the declared public policy of the United States and the eventual establishment of a permanent international tribunal is a certainty. Enlightened public opinion is the lever to move the world, and public opinion is active. The society is

not without justification in believing that arbitration can be made acceptable to the nations at large and perform a great and beneficent mission. It can only hope to triumph in the present state of the world, if it be made judicial, and a permanent tribunal be created which will inspire confidence of the nations by its calm, passionless and judicial determination of international controversies submitted to it for decision.



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